

State of New Jersey
Department of Labor and Workforce Development
Board of Review

MEMORANDUM

To: Cornelia Calderone, Chair, Joseph Sieber,
Vice Chairman, and Frank Serico, Member

From: Gerald Yarbrough, Executive Secretary
Board of Review

Subject: Minutes of the May 3, 2006
Board of Review Meeting

Date: May 8, 2006

THESE MINUTES HAVE NOT BEEN FORMALLY APPROVED AND ARE SUBJECT TO
CHANGE OR MODIFICATION BY THE BOARD OF REVIEW AT ITS NEXT MEETING.

1. **FORMAL OPENING:** A regular meeting of the Board of Review, Department of Labor was held on Wednesday, May 3, 2006 at 9:00 a.m. at the Board of Review offices, Labor Building, John Fitch Plaza, 7th Floor, Large Conference Room, Trenton, New Jersey. Notice of said meeting was posted in the Board of Review's office, filed with the Secretary of State, and published annually in The Trenton Times and The Star Ledger. It was noted that the next regular meeting of the Board of Review is scheduled for Wednesday, May 10, 2006 at 9:00 a.m. at the Board of Review offices, Labor Building, John Fitch Plaza, 7th Floor, Large Conference Room, Trenton, New Jersey.

Roll Call: Present: Mr. Sieber, Vice Chair
Mr. Serico, Member
Mr. Yarbrough, Executive Secretary
Absent: Ms. Calderone, Chair

2. Following a motion by Mr. Sieber and seconded by Mr. Serico, the minutes of the April 26, 2006 meeting were approved.

3. Old Business

- (a) 99, 677

Mr. Gitter presented this case that involved a claimant who was discharged by the employer. The Appeal Tribunal had held the claimant disqualified for benefits under N.J.S.A. 43:21-5(b), as her discharge was for gross misconduct connected with the work. The matter was tabled until additional information is obtained regarding an investigation by the Division of Wage and Hour Compliance.

4. New Business

(a) 101,528

Ms. Gagliardo described this case that involved a claimant who was injured at work and went on Workers' Compensation in October 2005. The claimant was separated by the employer as of December 16, 2005 for "job abandonment." The claimant was not able to return to work until December 28, 2005. He was in contact with the employer and attempted to return on an earlier date, but was unable to return because of his medical condition. The Appeal Tribunal had held the claimant disqualified for benefits as of December 18, 2005 under N.J.S.A.43:21-5(a). The Board noted that the claimant showed an intent to preserve the employer-employee relationship and did not voluntarily leave work. Also, there was no misconduct connected with the work as the claimant did not return because he was unable to work. As a result, the Board voted to reverse the Appeal Tribunal. Ms. Gagliardo will prepare the decision.

(b) 58,950

As presented by Mr. Maddow, this case involved a claimant who left work because of the behavior of her supervisor. The Appeal Tribunal had held the claimant disqualified for benefits under N.J.S.A. 43:21-5(a). After discussion, the Board voted to affirm the Appeal Tribunal.

(c) 99,779

As described by Ms. Keller, this case involved a claimant who was employed as a sales representative and was discharged for telling customers he was a city official. The Appeal Tribunal had held the claimant not disqualified for benefit under N.J.S.A. 43:21-5(b) as his discharge was not for misconduct or gross misconduct connected with the work. The Board noted that the claimant received prior warnings for the same behavior. Although the claimant's discharge was not for gross misconduct, his behavior constituted misconduct connected with the work. As a result, the Board voted to hold claimant disqualified for benefit under N.J.S.A. 43:21-5(b). Ms. Keller will prepare the decision.

(d) 100, 792

Ms. Barnwell presented this case that involved a claimant who was employed as a substitute custodian for a board of education and solicited a urine sample from a student in order to obtain a more favorable insurance premium. The claimant admitted his act to the employer. The Appeal Tribunal had held the claimant disqualified under N.J.S.A. 43:21-5(b) from October 23, 2005 through December 3, 2005 as his discharge was for misconduct connected with the work. The Board noted that the claimant requested the urine sample for the purpose of defrauding an insurance

company, which is punishable as a crime of the third degree. As a result, the Board voted to modify the decision of the Appeal Tribunal as the claimant was not discharged for misconduct connected with the work, but for gross misconduct connected with the work under N.J.S.A. 43:21-5(b). Ms. Barnwell will prepare the decision.

There being no further business to transact, a motion was made by Mr. Sieber to adjourn the meeting. Mr. Serico seconded the motion.

SUBMITTED FOR APPROVAL:

Gerald Yarbrough
Executive Secretary

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